

SN 09/737,841  
Page 6 of 14

### **REMARKS**

This response is intended as a full and complete response to the final Office Action mailed February 24, 2006. In the Office Action, the Examiner notes that claims 1-13, 16, 18, 21-24 and 29 are pending and rejected. By this response, Applicants have herein amended claim 1. Claims 6 and 13 are hereby cancelled. No new matter has been entered.

In view of both the amendments presented above and the following discussion, Applicants submit that none of the claims now pending in the application are anticipated or obvious under the respective provisions of 35 U.S.C. §§102 and 103.

It is to be understood that Applicants, by amending the claims, do not acquiesce to the Examiner's characterizations of the art of record or to Applicants' subject matter recited in the pending claims. Further, Applicants are not acquiescing to the Examiner's statements as to the applicability of the art of record to the pending claims by filing the instant responsive amendment.

### **REJECTIONS**

#### **35 U.S.C. §102**

##### **Claims 1, 4-13, 16 and 18**

The Examiner has rejected claims 1, 4-13, 16 and 18 under 35 U.S.C. §102(b) as being anticipated by Herz et al. U.S. Patent No. 5,758,257 (hereinafter "Herz"). Applicants respectfully traverse the rejection.

In general, Herz teaches a system for scheduling the receipt of desired movies and other forms of data from a network which simultaneously distributes many sources of such data to many customers. In particular, Herz teaches that customer profiles are developed for each customer. The customer profiles describe the importance of certain characteristics of broadcast video programs to each customer. From the customer profiles, an agreement matrix is calculated by comparing the customer profiles to video profiles which define the characteristics of available video programs. As taught in Herz, customer profiles and agreement matrices may be updated using feedback information collected from the set top multimedia terminal. As taught in Herz, feedback information includes a record of video programs actually watched by a customer.

SN 09/737,841

Page 7 of 14

Herz, however, fails to teach or suggest each and every limitation of Applicants' invention of at least claim 1. Namely, Herz fails to teach or suggest at least the limitation of "subscriber selections comprising selections associated with at least one IPG page, wherein the selections associated with the at least one IPG page comprise a plurality of key presses associated with navigation by a user about the at least one IPG page and a plurality of actions performed in response to the key presses," as taught in Applicants' invention of at least claim 1. Specifically, Applicants claim 1 positively recites:

A method for targeting programming according to subscriber preferences, comprising:

propagating, via a forward application transport channel (FATC), a plurality of video streams representing respective pages of an interactive program guide (IPG), each IPG page depicting programming associated with a respective pair of channel groups and time slots;

polling the plurality of terminals for trend data, the trend data being generated by an application executing at the plurality of terminals, the trend data including preference indicative information, the preference indicative information including subscriber selections received at the terminals, the subscriber selections comprising selections associated with at least one IPG page, wherein the selections associated with the at least one IPG page comprise a plurality of remote control key presses associated with navigation by a user about the at least one IPG page and a plurality of actions performed in response to the key presses;

receiving the trend data via a back channel;

determining trend data associated with accumulated subscriber selections;

and

adapting at least one IPG page in response to said determined trend data (Emphasis added.)

As such, Applicants' invention of at least claim 1 teaches a method for targeting programming according to subscriber preferences. A plurality of video streams, which represent respective pages of an IPG, are propagated via a forward application transport channel. A plurality of terminals is polled for trend data including preference indicative information. The preference indicative information includes subscriber selections received at the terminals. The subscriber selections include selections associated with at least one IPG page, wherein the selections associated with the at least one IPG page comprise a plurality of remote control key presses associated with navigation by a user about the at least one IPG page and a plurality of actions performed in response to the key presses. In other words, Applicants' invention of at least claim 1 collects trend data based on remote control key presses associated with at

SN 09/737,841

Page 8 of 14

least one IPG page as a user navigates the at least one IPG page, as well as actions performed in response to the key presses.

By contrast, Herz teaches updating of a customer profile (indicative of the preferences of that customer) using records of video programs actually watched by the customer. A record of a video program watched by a customer, as taught in Herz, is simply not a record of a selection associated with an IPG page, much less a plurality of remote control key presses associated with navigation by a user about at least one IPG page or actions performed in response to such key presses, as taught in Applicants' invention of at least claim 1. Herz is completely devoid of any teaching or suggestion of Applicants' limitation "wherein the selections associated with the at least one IPG page comprise a plurality of remote control key presses associated with navigation by a user about the at least one IPG page and a plurality of actions performed in response to the key presses," as taught in Applicants' invention of at least claim 1.

In the Office Action, a first portion of Herz cited by the Examiner (Office Action, Pg. 3) for teaching the trend data of Applicants' invention specifically states that "[p]referably, the monitoring function is accomplished by storing, at each customer's set top multimedia terminal, a record of the video programs actually watched by the customer at the customer's location and, in the case of a system with a two-way communication path to the head end, polling the set top multimedia terminals of all customers to retrieve the records of the video programs actually watched by the customers at each customer location. Also, from the retrieved records, combined customer profiles may be determined which reflect the customer profiles of a plurality of customers. Then, by determining the agreement matrix using the combined customer profiles for each node, programming channels containing the video programming which are collectively most desired by the customers making up the combined customer profiles may be determined for transmission from the head end to each of the customers connected to the same node." (Herz, Col. 6, Lines 56-59, Emphasis added).

In other words, in this cited portion of Herz, Herz merely teaches updating a customer profile based on video programs actually watched by a customer. This cited portion of Herz is completely devoid of any teaching or suggestion of subscriber selections from an IPG page, much less collecting such subscriber selections

SN 09/737,841

Page 9 of 14

associated with IPG pages for use as trend data. Furthermore, Herz is completely devoid of any teaching or suggestion of remote control key presses associated with navigation by a user about an IPG page, much less actions performed in response to such key presses. As such, a record of a video program actually watched by a customer, as taught in Herz, is simply not a subscriber selection from an IPG page, much less a record of a plurality of remote control key presses associated with navigation by a user about an IPG page or a plurality of actions performed in response to such key presses, as taught in Applicants' invention of at least claim 1. Applicants respectfully invite the Examiner to specifically identify where in the cited portion of Herz a subscriber selection from an IPG page is taught.

In the Office Action, another portion of Herz cited by the Examiner (Office Action, Pg. 4 - 5, Remarks) for teaching the trend data of Applicants' invention specifically states that:

"FIG. 9 illustrates a software block diagram of an embodiment of a multimedia terminal 620 for use in the one-way and two-way system embodiments described above. As illustrated, the video program material and the associated content profiles are received at the set top multimedia terminal 620 from the head end 408. A program list indicating those video programs which the user of that set top multimedia terminal 412 has available and is authorized to receive is stored in memory 902. The associated content profiles (program characteristic lists) is preferably received with the electronic program guide data and stored in memory 904. From the content profiles stored in memory 904, processor 906 calculates and updates the agreement matrix using the techniques described in detail above and stores the resulting agreement matrix in memory 908. As noted above, the customer profiles used in calculating the agreement matrix preferably differ in accordance with the time of the day and of the week and/or the expected mood of the customer. Accordingly, a record of the time of day is stored in memory 910 as received separately from the CATV head end or as input by the customer and maintained locally at the set top multimedia terminal 620. Similarly, the expected mood of the customer is stored in memory 910. As desired, the expected mood may be accessed and modified by the customer.

From the agreement matrix determined by processor 906 and stored in memory 908, a list of "preferred channel selections" or "virtual channels" is determined. An electronic program or display guide 914 listing the available selections is provided. In accordance with the invention, the display guide 914 is either modified to include fields for the "virtual" channels, or else the recommended programming is highlighted in

SN 09/737,841

Page 10 of 14

an obvious manner or reordered for the customer's perusal and selection of the desired programming. Once the customer has selected the desired virtual channel from a highlighted program guide or a listing of the programs available on the virtual channels using the customer's remote control unit, processor 906 then accordingly instructs channel selector 912 to tune the channels for the programming determined in accordance with the techniques of the invention to be most desirable to that customer." (Herz, Col. 45, Lines 9-45).

This cited portion of Herz merely teaches that a content profile may be received from a headend as part of electronic program guide data, and that the content profile may be used for updating an agreement matrix. Furthermore, this cited portion of Herz merely teaches that a display guide may be modified to reorder programming choices or highlight recommended programming. Nowhere in the cited portion of Herz, however, is there any teaching or suggestion of collecting trend data including subscriber selections associated with program guide page. Rather, Herz merely teaches that a program guide page is modified using a content profile. As such, since Herz fails to teach or suggest collecting trend data including subscriber selections associated with an IPG page, Herz also fails to teach or suggestion that such selections associated with an IPG page include a plurality of remote control key presses associated with navigation by a user about the at least one IPG page or a plurality of actions performed in response to the key presses, as taught in Applicants' invention of at least claim 1.

Furthermore, although the cited portion of Herz mentions selection of a program from a program guide, Herz clearly indicates that such selection merely instructs a channel selector to tune to the channel selected by the user. The cited portion of Herz does not teach or suggest that such selection from the program guide is recorded as trend data. Rather, it is only the video programs actually watched by the customer that are used as trend data in the Herz system. The selection of a virtual channel for instructing a channel selector to tune to the channel, as taught in Herz, is not collection of trend data including subscriber selections comprising selections associated with at least one IPG page, as taught in Applicants' invention of at least claim 1. As such, Herz fails to teach or suggest collecting trend data including subscriber selections associated with an IPG page, much less that such selections associated with an IPG page include a plurality of remote control key presses associated with navigation by a user about the

SN 09/737,841

Page 11 of 14

at least one IPG page or a plurality of actions performed in response to the key presses, as taught in Applicants' invention of at least claim 1.

As such, the cited portions of Herz fail to teach or suggest at least the limitation of "wherein the selections associated with the at least one IPG page comprise a plurality of remote control key presses associated with navigation by a user about the at least one IPG page and a plurality of actions performed in response to the key presses," as taught in Applicants' invention of at least claim 1. Furthermore, each of the other portions of Herz cited by the Examiner fails to teach or even suggest Applicants' limitation of polling a plurality of terminals for trend data where trend data includes subscriber selections comprising selections associated with at least one IPG page. For example, Col. 41, Lines 42-56 of Herz merely teaches hardware configurations for transmitting collected data from customer terminals to an associated headend. Similarly, for example, Col. 43, Lines 2-12 of Herz merely teaches that each remote terminal is instructed to transmit collected data to an associated headend in response to a command from a CATV system controller.

Moreover, Herz is completely devoid of any teaching or suggestion of collecting any data associated with subscriber selections associated with an IPG page, much less selections associated with the at least one IPG page including remote control key presses associated with navigation by a user about the at least one IPG page and actions performed in response to the key presses. As such, Herz is completely devoid of any teaching or suggestion of at least the limitation of "wherein the selections associated with the at least one IPG page comprise a plurality of remote control key presses associated with navigation by a user about the at least one IPG page and a plurality of actions performed in response to the key presses," as taught in Applicants' invention of at least claim 1. As such, Herz fails to teach or suggest each and every element of Applicants' invention of at least claim 1, as arranged in the claim.

"Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim" (Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing Connell v. Sears, Roebuck & Co., 722 F.2d 1542, 220

SN 09/737,841

Page 12 of 14

USPQ 193 (Fed. Cir. 1983)) (emphasis added). The Herz reference fails to disclose each and every element of the claimed invention, as arranged in the claim.

As such, Applicants submit that independent claim 1 is not anticipated and fully satisfies the requirements of 35 U.S.C. §102 and is patentable thereunder. Furthermore, claims 4-13, 16, and 18 depend, either directly or indirectly, from independent claim 1 and recite additional limitations therefor. As such, and for at least the same reasons as discussed above, Applicants submit that the dependent claims are also not anticipated and fully satisfy the requirements of 35 U.S.C. §102 and are patentable thereunder. Therefore, Applicants respectfully request that the Examiner's rejection be withdrawn.

### 35 U.S.C. §103

#### Claims 2-3, 21-24

The Examiner has rejected claims 2-3 and 21-24 under 35 U.S.C. §103(a) as being unpatentable over Herz in view of Hendricks et al. U.S. Patent No. 6,539,548 (hereinafter "Hendricks"). Applicants respectfully traverse the rejection.

Claims 2-3 and 21-24 depend directly or indirectly from independent claim 1. As such, for at least the reasons discussed above in response to the Examiner's §102 rejection of independent claim 1, Applicants respectfully submit that the Herz reference fails to teach or suggest Applicants' invention as a whole. Furthermore, Hendricks fails to bridge the substantial gap between the Herz reference and Applicants' invention.

In general, Hendricks discloses an operations center for a television program packaging and delivery system. The operations center organizes and packages television programming and program information for delivery to and from consumer homes. It is noted that demographic information is utilized in the context of a computer assisted packaging system (CAP) 260 (along with program ratings) in performing program packaging tasks. As taught in Hendricks, demographic information is generated at the operations center and stored within a database associated with the operations center. That is, demographic data is not provided by the set top terminals; rather, it is determined at the operations center by, for example, a marketing information interface (MII) 402. The MII cooperates with the other operations center functions to derive the demographic information and store it therein.

SN 09/737,841

Page 13 of 14

Hendricks, however, fails to teach or suggest at least the limitation of "wherein the selections associated with the at least one IPG page comprise a plurality of remote control key presses associated with navigation by a user about the at least one IPG page and a plurality of actions performed in response to the key presses," as taught in Applicants' invention of at least claim 1. Rather, Hendricks merely teaches that demographic data is stored in the Hendricks operations center. The demographics data of Hendricks is not trend data, much less trend data including preference indicative information such as subscriber selections received at the terminals. Furthermore, the demographics data of Hendricks is simply not selections associated with the at least one IPG page, including remote control key presses associated with navigation by a user about the at least one IPG page, or actions performed in response to the key presses. As such, Hendricks fails to teach or suggest each and every element of Applicants' invention of at least claim 1.

The test under 35 U.S.C. §103 is not whether an improvement or a use set forth in a patent would have been obvious or non-obvious; rather the test is whether the claimed invention, considered as a whole, would have been obvious. Jones v. Hardy, 110 USPQ 1021, 1024 (Fed. Cir. 1984) (emphasis added). Moreover, the invention as a whole is not restricted to the specific subject matter claimed, but also embraces its properties and the problem it solves. In re Wright, 6 USPQ 2d 1959, 1961 (Fed. Cir. 1988) (emphasis added). The Herz and Hendricks references, alone or in combination, fail to teach or suggest Applicants' invention as a whole.

As such, Applicants submit that claim 1 is not obvious and fully satisfies the requirements of 35 U.S.C. §103 and is patentable thereunder. Furthermore, claims 2-3 and 21-24 depend, either directly or indirectly, from independent claim 1 and recite additional limitations therefor. As such, and for at least the same reasons as discussed above, Applicants submit that these dependent claims also fully satisfy the requirements of 35 U.S.C. §103 and are patentable thereunder. Therefore, Applicants respectfully request that the Examiner's rejection be withdrawn.



SN 09/737,841

Page 14 of 14

**CONCLUSION**

Applicants believe all the claims are presently in condition for allowance. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring the issuance of an adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Michael Bentley at (732) 383-1434 or Eamon J. Wall, Esq. at (732) 530-9404, so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

3/30/06

E J Wall

Eamon J. Wall, Attorney  
Registration No. 39,414  
(732) 530-9404

Patterson & Sheridan, LLP  
Attorneys at Law  
595 Shrewsbury Avenue, Suite 100  
Shrewsbury, New Jersey 07702